

MINUTES OF PUBLIC MEETING
New York City Loft Board Public Meeting

March 17, 2022

The meeting began at 2:12 P.M.

Attendees: Elliott Barowitz, Public Member; Charles DeLaney, Tenants' Representative; Christian Hylton, Owners' Representative; Heather Roslund, Public Member; Nicole Oddo, Public Member; Richard Roche, Fire Department's Representative *ex officio*; Renaldo Hylton, Chairperson Designee

INTRODUCTION:

Chairperson Hylton welcomed those present to the March 17, 2022 public meeting of the New York City Loft Board and explained that the meeting was being held via teleconference due to the coronavirus emergency, pursuant to legislation S.50001/A.40001 signed by Governor Hochul. He then briefly summarized Section 282 of the New York State Multiple Dwelling Law, which establishes the New York City Loft Board and described the general operation of the Board.

STAFFING ANNOUNCEMENTS

Chairperson Hylton began by thanking the Board and the loft community for their patience during January and February and reassured them that, while there were no Board meetings during that time, the Board continued with its day-to-day functions as best as possible, responding to inquiries, complaints, and administrative requests, and conducting legal reviews and case preparation.

He explained that between November and December of last year, the Board lost critical staff -- both the Executive Director and Deputy Executive Director. While the Chair and Board had the opportunity to say farewell to Tina Lin, the former Deputy Executive Director, in November, such was not the case with Mr. Schultz, the former Executive Director. The Chairperson acknowledged Mr. Schultz's service and excellent leadership during the heart of the pandemic and explained that he had resigned his distinguished career with the Department of Buildings and the city to pursue an opportunity that was

best for him and his family. On behalf of the Board, the Chairperson thanked Mr. Schultz and wished him well in his current endeavors. He then turned to announcing the new staff appointments.

Chairperson Hylton: Today, it is my distinct honor to introduce our new Deputy Director and Deputy General Counsel of the Loft Board, Stephan Clarke. Everyone knows Stephan. He has been an attorney and senior attorney with Loft Board now for about five years and has distinguished himself in more ways than one. Most notably, over the last two years, Stephan has led our efforts in rulemaking and has done an excellent job in coordinating our efforts to update the Loft Board rules. We are proud of your work, Stephan, and look forward to your continued growth here with the Loft Board.

Our new Executive Director and General Counsel of the Loft Board, Martha Cruz, needs no introduction to those of you who have been around for some time. Martha is no stranger to the Loft Board community. She served fourteen years previously with the New York City Loft Board, before leaving in 2019. During those years, Martha served with distinction in the role of Deputy General Counsel for ten years, where she demonstrated her key knowledge of the Loft Law and the Loft Board rules and its procedures. So I'm confident that Martha will step into her new role as Executive Director with the purpose and resolve needed to tackle the challenges we face, and that she will continue the important work of the Loft Board.

The Chair asks everyone to support our new leaders and give them the opportunity to provide fresh direction and continued leadership as they do the important business of the Loft Board. Our mission here hasn't changed, and our new leaders will continue to serve that mission. Again, I thank everyone for their patience and support.

VOTE ON MEETING MINUTES:

November 4, 2022 Meeting Minutes

Chairperson Hylton asked if there were any comments on or corrections to the November 4, 2021 minutes. As there were no comments, he asked for a motion to accept the November 4, 2021 minutes, and for a second.

Mr. Barowitz moved to accept the November 4, 2021 minutes, and **Mr. Hylton** seconded.

The vote

Members concurring: Mr. Barowitz, Mr. DeLaney, Mr. Hylton, Ms. Oddo, Ms. Roslund, Chairperson Hylton

Members dissenting: 0

Members abstaining: Mr. Roche

Members absent: Ms. Rajan, Ms. Hayashi

Members recused: 0

November 18, 2022 Meeting Minutes

Chairperson Hylton noted that a correction to the attendance had been made. Mr. Roche had been marked absent, but was, in fact, present; then asked if there were any additional comments or corrections.

Mr. DeLaney recapped the extensive discussion the Board had had concerning unsolicited and/or inappropriate communications sent to Board members; how they should be treated; and how that could be prevented. He cited the recent incident that had sparked the discussion, where an attorney active in the loft community, but not involved in the matter before the Board, sent an email to certain Board members, saying it's a bad idea if you adopt the opinion in this Proposed Order for the following reasons.

He noted that then-Executive Director Schultz was going to look into this further and report back on several issues and wondered if Ms. Cruz would be able to pick up that thread.

Ms. Cruz asked Mr. DeLaney if what he was asking for was the development of a protocol for handling such submissions, whether from an attorney or member of the public.

Mr. DeLaney said that would be a good start.

Chairperson Hylton asked Mr. DeLaney if there was something specific Mr. Schultz had not addressed in that extensive discussion at the last meeting. He recounted Mr. Schultz explaining that Board members should pay attention to the subject line of emails or other opening header information to determine whether or not it is material they should read or not. If it is not to be read or if they are not sure, they should forward it to the Executive Director, who would advise how to proceed.

Chairperson Hylton continued: We can't prosecute people for bombarding us with information. But in terms of how to handle that communication, I suppose Ms. Cruz could clarify that in the next meeting, if you wish. But in terms of how to deal with people that did the wrong thing, though they perhaps thought they were doing the right thing, I don't know if that's the business of the Loft Board. But we can certainly give you some guidance on how you should handle such situations.

Mr. Hylton said that if Mr. DeLaney was asking for clarification of ex parte communications with Board members, he didn't think that was unreasonable.

Chairperson Hylton said he didn't say it was unreasonable but was asking if it was not laid out clearly enough by Mr. Schultz at the meeting – what to do and how to do it – and if Mr. DeLaney would prefer a fresh interpretation from Ms. Cruz. He asked Ms. Cruz if she would review the November conversation and perhaps offer some fresh guidance from her own research.

Ms. Cruz agreed.

Mr. DeLaney noted that the open questions Mr. Schultz was going to pursue could be found on page 5 of the minutes: "Thank you, I'll answer what I can right now. And then acknowledge which parts we're going to research to give you all better answers. I'll start with the unsolicited communications piece and a couple of fundamentals in the law I think you can rely on."

Mr. DeLaney also felt that, though it might not be well-received by everyone, it was important to set guidelines for the public in terms of a clear line that should not be crossed and what the consequences of crossing that line might be. He closed by saying it was still not clear to him what to do with a letter sent to all members of the Board.

Chairperson Hylton agreed and said he believed there had been discussion of putting guidelines on the website. He thanked Mr. DeLaney and asked if there were any further comments on the minutes (none). He then asked for a motion to accept the November 18, 2022 minutes, and for a second.

Mr. Barowitz moved to accept the November 18, 2022 minutes, and **Mr. Hylton** seconded.

The vote

Members concurring: Mr. Barowitz, Mr. Roche, Mr. DeLaney, Mr. Hylton, Ms. Oddo, Ms. Roslund, Chairperson Hylton

Members dissenting: 0

Members abstaining: 0

Members absent: Ms. Rajan, Ms. Hayashi

Members recused: 0

EXECUTIVE DIRECTOR'S REPORT

Ms. Cruz: Good afternoon, Board members and members of the public. It's a privilege and honor to be here today. Since your last Board meeting on November 18, the courts have issued four notable and important court decisions involving IMD spaces. We provided those decisions to the Board members last week, and I will explain those decisions briefly now.

16 Cypress Avenue, LLC versus the Loft Board is a Supreme Court decision dated February 14, 2022. The owner's Article 78 petition challenges Loft Board Order number 4995 in a protected occupant's case and Order number 5053 for an owner's reconsideration case.

In Order number 4995, the Loft Board granted the protected occupant application despite a prior sales record filing for the unit. The owner argued that the application should be denied because the owner purchased Loft Law rights pursuant to MDL 286(12) from a prior tenant. The Loft Board found that the

sales filing did not constitute a valid sale for three reasons. The tenant who allegedly sold his rights testified that he signed the agreement to receive his security deposit back. At the time, he did not understand why he received a ten-dollar payment in addition to the security deposit. The agreement did not cite to the Loft Law, nor did it cite to MDL 286(12). The Loft Board sales record form was not signed by the tenant at the time of the sale. The tenant signed the sales record form months after the alleged sale occurred.

In Order number 5053, the Loft Board denied the reconsideration application and the owner filed the Article 78. The court's decision in the Article 78 denied the owner's petition. The court found the Loft Board had a rational basis for its decision to reject the sales filing and grant the protected occupant application.

Matter of Callen is a Court of Appeals decision that was issued on February 15, 2022. In Loft Board Order 4080, the Loft Board rejected a proposed settlement because the parties agreed that the coverage application would be withdrawn, and the tenants would be permitted to continue their residential use of their spaces in the building. Without a Certificate of Occupancy, the residential use by the tenants would be illegal. The Loft Board rejected the settlement as against public policy. In their decision, the Court of Appeals found that the Board's determination to reject the proposed settlement and remand the matter for further proceedings was not irrational in this case. The staff is preparing the cases for remand to OATH.

Matter of Hughes is an Appellate Division First Department case, and that decision is dated March 3, 2022. On November 30 of 2017, the Loft Board issued Order Number 4714, granting coverage to the first-floor unit pursuant to MDL 281(5), but denying the protected occupancy claim of Frank Hughes. The Loft Board found that Mr. Hughes was not a residential occupant of the unit and did not use the unit as his primary residence. Mr. Hughes filed an application seeking reconsideration of the Order. In Order number 4020, the Loft Board denied the reconsideration application. In January 2019, Mr. Hughes filed an Article 78 proceeding, challenging the Loft Board's Orders and the denial of the protected occupant claim. In the decision, the Appellate Division found that the Loft Board did not unfairly apply the primary residence requirement, which was added to Article 7-C in 1992.

Aurora Associates LLC versus Locatelli and Cleantech Strategies LLC is a Court of Appeals decision, dated February 15, 2022. This case involves the interplay between protection under the ETPA (Emergency Tenant Protection Act) and the Loft Law after a sale of rights pursuant to MDL 286(12). The owner of the building commenced a holdover proceeding to recover possession of the unit for which a sale of rights had previously been filed with the Loft Board. The Housing Court dismissed the owner's petition for possession. The Appellate Division First Department held, among other things, that the eviction proceeding was properly dismissed because the unit was subject to regulation under the ETPA. The Court of Appeals reversed the finding, finding that the IMD unit was exempt from rent regulation due to a sale of Loft Law rights. The court found that the IMD unit is not subject to rent regulation under the ETPA after a sale of rights, if the sole basis for rent regulation was the Loft Law.

Chairperson Hylton thanked Ms. Cruz and asked if there were any questions for her.

Mr. DeLaney: I have a couple of questions and a comment. The comment is really directed to the audience. I would highly recommend, if one has the time and inclination to read roughly forty pages, the *Matter of Aurora Associates versus Locatelli*, easily found by googling Aurora Associates. It's really a fascinating history of the Loft Law. And you know that when the Court of Appeals, the highest court in the state, starts an opinion with, "This case requires us to revisit what we've previously described as a patchwork of rent control legislation," quotes, "that is grown into an impenetrable thicket of rules and regulations quoting a prior decision," you know it's a good read, particularly the dissenting opinion, which is very interesting, and which I may find myself moved to quote from later in the meeting.

Now to a couple questions. Ms. Cruz, one of the things that has been a strong point of some Executive Directors and a weaker attribute for some others is working with the staff to prepare statistics. And in his brief tenure, Mr. Schultz was quite helpful, so I wonder if you had a chance to give some thought to the issue of preparing statistics on some sort of regular basis.

Ms. Cruz: Yes. Statistics are challenging for the staff, but when I was here before, I always provided statistics. So I will continue to do that and do my best to create systems that will provide us with the opportunity to do it in a more efficient way, given that the technology here has improved considerably.

I'm hopeful that we will find a way to provide meaningful statistics about buildings, buildings in our jurisdiction, where they are in the process, and about case management.

Mr. DeLaney: Great, that would be very helpful. The other concern that I've heard expressed on a fairly regular basis recently by tenants is with regard to matters of enforcement. I wonder if you have any comment on that. As you know, we had an attorney who had put forth an enforcement road roadmap and action plan shortly before she left the agency, but that was back in 2016 I think.

Ms. Cruz: I have already started a conversation with our enforcement attorney here to dust off that enforcement plan and build on it. Those discussions will continue, and I'm hopeful that in the coming months I will be able to report on what enforcement actions we have taken and what enforcement actions we are planning to bring.

Mr. DeLaney: Thank you.

Chairperson Hylton: Not to mention, of course, that COVID threw a monkey wrench into the works. But yes, you're right, Mr. DeLaney. Enforcement is an important part of what we plan on doing. Are there any other questions for Ms. Cruz? (None).

THE CASES

Summary Calendar

Chairperson Hylton announced that there are six cases on the Summary Calendar, which are usually voted on as a group. However, at the request of Board members, case number 3, Gerald Gay Bennett, Jr., at 9 White Street in Brooklyn, PO-0163, would be voted on separately.

He further noted that at the quasi-judicial session, it was decided to make a change to the Proposed Order for Case number 2, Antoni Gosh. The last sentence on the Proposed Order, which reads, "The Loft Board neither accepts nor rejects the remaining terms of the stipulation, " will be stricken from the final Order.

New York City Loft Board: Minutes of Public Meeting: March 17, 2022

	Applicant(s)	Address	Docket No.
1	MZBJ Holdings, LLC	250 Moore Street, Brooklyn	LS-0279
<p><i>The owner of the building filed an access application for Unit 407. The owner ultimately withdrew its access application without prejudice because the residential occupant provided access to Unit 407. The owner's access application is deemed resolved.</i></p>			
2	Antoni Ghosh	43-49 Bleecker Street, Manhattan	PO-007, TR-1361
<p><i>Antoni Ghosh filed applications seeking coverage for Unit 201 pursuant to MDL § 281(5) and protected occupancy status. The parties executed a stipulation whereby Mr. Ghosh withdrew his coverage and protected occupancy applications with prejudice. Mr. Ghosh's coverage and protected occupancy applications are deemed resolved.</i></p>			
3.	Gerald Gay Bennett, Jr.	9 White Street, Brooklyn	PO-0163
4.	Donald M. Lunetta	281 North 7 th Street, Brooklyn	TA-0289
<p><i>Donald Lunetta filed a rent dispute application for Unit 14. In a letter dated February 10, 2022, the Tenant withdrew the application with prejudice.</i></p>			
5.	American Package Company Inc.	226-240 Franklin Street, Brooklyn	R-0389
<p><i>Owner filed a reconsideration application seeking review of LBO 5098. Tenants filed an answer. Owner subsequently withdrew the application without prejudice. The application is deemed resolved.</i></p>			
6.	James Gubelmann	442 Broadway, Manhattan	TR-1373, TR-1374
<p><i>Tenant filed two applications seeking Article 7-C coverage of his unit pursuant to MDL § 281(5) and MDL § 281(6). Owner filed answers to the applications. In a stipulation of discontinuance, Tenant agreed to withdraw his applications with prejudice. The applications are resolved.</i></p>			

Chairperson Hylton asked if there were any comments on these cases (none). He then asked for a motion to accept these cases and for a second.

Ms. Oddo moved to accept these cases, and **Mr. Hylton** seconded.

The vote

Members concurring: Mr. Barowitz, Mr. Roche, Mr. DeLaney, Mr. Hylton, Ms. Oddo, Ms. Roslund, Chairperson Hylton

Members dissenting: 0

Members abstaining: 0

Members absent: Ms. Rajan, Ms. Hayashi

Members recused: 0

	Applicant(s)	Address	Docket No.
3	Gerald Gay Bennett, Jr.	9 White Street, Brooklyn	PO-0163
<i>Gerald Gay Bennett, Jr., the residential tenant of Unit 213, filed an application seeking protected occupancy status. The parties executed a stipulation of settlement whereby the parties agreed, among other things, that Mr. Bennett is the protected occupant of Unit 213 and that Mr. Bennett was withdrawing his protected occupancy application with prejudice. Mr. Bennett's protected occupancy application is deemed resolved. The remaining terms of the stipulation of settlement are neither accepted nor rejected. The Loft Board staff is directed to update the Loft Board's records to reflect Mr. Bennett as the protected occupant of Unit 213.</i>			

Chairperson Hylton asked for a motion to accept this case and for a second.

Mr. Hylton moved to accept this case, and **Ms. Oddo** seconded.

Chairperson Hylton asked if there were any comments on this case.

Mr. DeLaney: Yes, I asked that this case be taken up separately. The Board has what I've sometimes referred to as weasel wording. This case involves a situation where the protected occupancy of an individual applicant is, in essence, granted because the owner agreed to list the applicant as the protected occupant. And there's a stipulation of settlement -- the case went to OATH, but it got settled prior to a decision being made, which is why it's on the Summary calendar -- but the stipulation, to my view, is so egregious that one of the provisions -- provision number 9 of the STIP --- is: "The applicant officially waives any claims or right of involvement to the Narrative Statement process and agrees to cooperate with the owner and owner's architect, so long as the square feet of his unit does not diminish." Having somebody waive their right to the Narrative Statement conference in exchange for

protected occupancy status, to me, seems inappropriate. This is also a large building with many units -- sixty or so -- at 9 White Street.

Then there's this: "The parties further agree that the following is the legal base rent under the Loft Law..." -- the legal base rent under the Loft Law -- "... for the premises: \$3,500 a month. Applicant agrees to pay this amount in addition to applicable increases that are provided by law throughout his prospective occupancy at the premises once his unit receives a Certificate of Occupancy for residential purposes from the Department of Buildings." Number 6: "In the interim, between the signature of the parties on this agreement and the issuance of the Certificate of Occupancy, it is hereby mutually agreed that the applicant shall pay a monthly rent in the amount of \$1,500."

So that means \$2,000 a month less from the legal base rent -- as if landlord and tenant could agree on what the legal base rent under the Loft Law is. In addition to being kind of incomprehensible, boy, if I had that kind of stipulation going, I would sure drag my feet on legalization. It seems like kind of not such a great thing. And for us to just neither accept nor reject, as I've raised before, I just find it incomprehensible. I plan to vote no.

Chairperson Hylton: Thank you, Mr. DeLaney

The vote

Members concurring: Mr. Barowitz, Mr. Roche, Mr. Hylton, Ms. Oddo, Chairperson Hylton

Members dissenting: Mr. DeLaney, Ms. Roslund,

Members abstaining: 0

Members absent: Ms. Rajan, Ms. Hayashi

Members recused: 0

The Master Calendar

Chairperson Hylton introduced the first of the two cases on this Calendar.

	Applicant(s)	Address	Docket No.
7	Walter Kim and Leslie Ann Feldman-Kim	33 Union Square West, Manhattan	PO-0051, TA-0240
<p><i>Walter Kim and Leslie Ann Feldman-Kim, the residential tenants of Unit 4R, filed a coverage claim for Unit 4R pursuant to MDL § 281(1), protected occupancy claims, as well as a rent dispute claim. Although coverage under MDL § 281(1) is not precluded by the fact that the building received a residential certificate of occupancy in 1997, the tenants failed to establish residential occupancy of Unit 4R from April 1, 1980 through December 1, 1981, which is the relevant window period under MDL § 281(1). In addition, because a residential certificate of occupancy was issued for the building, including Unit 4R, prior to the effective date of the 2019 amendments to the Loft Law, Unit 4R is not eligible for coverage under MDL § 281(6). The tenants' claim for Loft Law coverage is denied. Furthermore, the tenants' protected occupancy and rent dispute claims</i></p>			

Ms. Lee presented this case.

Chairperson Hylton: Asked for a motion to accept this case and for a second.

Ms. Roslund moved to accept this case, and **Mr. Barowitz** seconded.

Chairperson Hylton asked if there were any comments on this case (none).

The vote

Members concurring: Mr. Barowitz, Mr. Roche, Ms. Roslund, Mr. Hylton, Ms. Oddo, Chairperson Hylton

Members dissenting: Mr. DeLaney,

Members abstaining: 0

Members absent: Ms. Rajan, Ms. Hayashi

Members recused: 0

	Applicant(s)	Address	Docket No.
8	Frank Hughes	401 Wythe Avenue, Brooklyn	PO-0105
<p><i>Pursuant to Loft Board Order No 4714, the Loft Board found the first-floor unit in the building located at 401 Wythe Avenue, Brooklyn, New York, is covered pursuant to MDL § 281(5), but denied tenant's</i></p>			

protected occupant claim because the Loft Board found tenant was not the residential occupant of the unit and did not use the units as his primary residence. Pursuant to Order No. 4820, the Loft Board denied tenant's reconsideration application. In January 2019, tenant filed an Article 78 petition challenging the Orders. The Article 78 petition was subsequently denied. In July 2019, tenant filed a new protected occupant claim based on the 2019 amendments to the Loft Law. The Loft Board found the 2019 amendments do not affect the prior analysis for tenant's protected occupancy claim. The Loft Board further found that although the 2019 amendments created a new window period for coverage under MDL § 281(6), and therefore a new protected occupancy claim for tenants seeking protection in units covered under MDL § 281(6), the subject unit was covered under MDL § 281(5) and the new window period is inapplicable.

Mr. Clarke presented this case.

Chairperson Hylton asked for a motion to accept this case and for a second.

Mr. Hylton moved to accept this case, and **Ms. Roslund** seconded.

Chairperson Hylton asked if there were any comments on this case.

Mr. DeLaney: As I explained to my colleagues earlier, I plan to vote no on this case, and I think the Board could arrive at a different conclusion and find that the applicant in this case is covered. This case has been through a lot of twists and turns, granted, and it's not disputed by the applicant that there was a period of time before the building was found to be an Interim Multiple Dwelling, and before the Window Period in question, when the applicant lived with his girlfriend and did not, for a period of a couple of years, use this loft as his primary residence -- during a period when the unit, when the building, was not covered by the Loft Law. Coverage was determined significantly after that point.

The argument advanced in the current Proposed Order, that you can't have a unit that's covered under 281(5) and the protected occupant covered under 281(6), strikes me as an interpretation, but not an interpretation that I can really find anywhere clearly, explicitly supported in the Loft Board's rules. And again, this gets into what I think the Court of Appeals called the thicket of rules and the like, but

up until a period after 2010, when the law was expanded and coverage under 281(5) was first opened up, the situation was such that the staff made the decision without consulting the Board. There were no hearings, and there's nothing in writing to bifurcate coverage and protected occupancy.

Until around 2014, I think, a coverage application included demonstrating that the individuals who are making the application lived there during the Window Period; and it was simple and straightforward. It was split apart, apparently, by the staff for other reasons. Fortunately, Ms. Cruz was here at that point in time, so she's aware of all this. So, I don't see any reason why one can't be the protected occupant under this bifurcated system under 281(6) in a unit that's covered under 281(5).

And the whole concept of protected occupancy as a separate condition really isn't spelled out in our rules. There were never any hearings; there was never any public comment. It was just done by the staff. I think the Proposed Order in this case is wrong and brings about the wrong result. Therefore, I plan to vote no.

Chairperson Hylton thanked Mr. DeLaney and asked if there were any additional comments (none).

The vote

Members concurring: Mr. Roche, Ms. Roslund, Mr. Hylton, Ms. Oddo, Chairperson Hylton

Members dissenting: Mr. Barowitz, Mr. DeLaney,

Members abstaining: 0

Members absent: Ms. Rajan, Ms. Hayashi

Members recused: 0

Chairperson Hylton: The motion is passed. Thank you. Board members, I know this is a very challenging case, and I appreciate your deliberations.

Before the break, **Mr. Clarke** informed the public that the rulemaking documents that would be reviewed in the second half were available on the Loft Board website.

A brief intermission

RULE-MAKING

Mr. Clarke began by identifying the documents emailed to the Board for review today, which consisted of the latest comments from the Law Department and saying he would provide the public with the corresponding page numbers in their copy. The Law Department was fine with most of the comments the Board had sent to them, and he felt they were, in general, coming to the end of rulemaking, but there were a few items the Law Department did not agree with, and that is what would be discussed today.

The majority of their comments concerned terms being defined twice: once in the global definitions section and then again in the body of the rules. The Law Department said, essentially, you can't define a term twice, unless it's a unique definition. Though some may want to have certain terms defined twice, the Law Department does not approve. So the staff prepared a side-by-side comparison of where the specific term was defined in the body of the rules and where it was defined in the global definitions for the Board's reference.

Mr. Clarke explained that the staff had already reviewed the terms and determined which should be removed and asked if this information was clear enough for the Board. If there were any questions, they could discuss them. If not, they could skip the definitions and go directly to a review of the comments below the chart

Mr. DeLaney expressed frustration with not receiving what was, essentially, a nineteen-page Excel spread sheet on Monday at 6:30PM to review for a Thursday Board meeting. So he did not have time to go through it, but continued: On the other hand, number one, having read the minutes from both of the November meetings, I know we covered a lot of things in great detail. I'm also aware that at this point, these rules have been under discussion in part since 2016, when Helaine Balsam took over the Executive Directorship, and which are in part necessitated by the 2019 amendments to the Loft Law. It's my understanding that we are hurting in terms of not having these rules in place. So, I'm in favor of

whatever we can do, whether that means additional meetings, or anything else, to expedite the completion of this process for this round.

It's also clear reading the minutes that we intend to come back to do some more work on section two. But a lot of what, at the moment, would help the Board function more effectively is to get these adopted so that, in particular, section one of the rules is more up-to-date. So maybe you could give us an overview of what needs to be done; how quickly we can get this to a final form that can be put before the public; a hearing can be held; and you can get these things adopted.

Chairperson Hylton: Before Mr. Clarke answers, thank you, Mr. DeLaney, for bringing up extra meetings because I think I have approval to have some extra meetings for rulemaking. I haven't had a chance to discuss this yet with Ms. Cruz, but we will be sitting down to come up with some proposed dates for an additional meeting. It's very important that we move forward with rules.

Mr. DeLaney: We've gone back and forth with the Law Department. In November, there were all kinds of not-momentous issues where the Law Department wants it this way, but we think it should be that way. And I'm just afraid that if we aim for perfection here, we're not going to get these adopted till 2025.

Chairperson Hylton agreed.

Mr. Clarke: I just want to say that all we have left to do is on this chart/Excel spreadsheet. It looks a bit intimidating because a lot of it is terms. But for the majority of it, what the Law Department is saying is, Loft Board, you need to choose one place where you want to define these terms. It can't be in both. After that, underneath the chart, there are eleven more comments. Once we go through this, we'll make the changes and send it back to the Law Department and, hopefully, get an okay.

There's one comment where we believe OATH should be involved in the conversation, but other than that, once the Law Department approves this, if they have no additional comments, then we can clean it up and prepare it to be voted on. That's where we are.

Chairperson Hylton: This chart contains staff's recommendation, correct? For example, you make a note here, "Because the language is the same, the Law Department recommends that it not be repeated." Where is it saying we're going to adopt this?

Mr. Clarke: On the right side of the table will be an update. Either we deleted this particular term from the global definitions, or we leave it in the global definitions.

Chairperson Hylton: So that becomes your recommendation to the Board?

Mr. Clarke: Yes, correct.

Chairperson Hylton: So, if we don't have any questions about the terms, we can move on to the more deliberative issues?

Mr. Clarke: Yes, which are towards the end of the document with the remaining Law comments.

Chairperson Hylton: If I understand you correctly, Mr. DeLaney, to move things forward, you're willing to accept staff's determinations regarding the Law Department's comments on definitions?

Mr. DeLaney: That would seem...no. Mr. Clarke, you and Mr. Argov have done a great job creating these charts -- whether to capitalized something or whether to have the definition in two places and definitions a tiny bit different in one than the other. But it seems to me that we're just so totally in the weeds, we're never going to get out of this. And if the Law Department, and OATH, and the Board's staff have to have another couple of months of dialogue.... There comes a point when I think we should move forward with these rules and resolve to clean things up either from input we get at the public hearing, or when we do another round of work on section two.

Chairperson Hylton: Agreed

Mr. DeLaney: And one would think that on some of this, we should trust the staff and move forward as much as possible.

Chairperson Hylton: Thank you. Any other comments regarding these definitions, that otherwise we'll just accept? I believe Mr. DeLaney is correct. This is too much in the weeds in terms of definitions, and

we have legal staff who are consulting with the Law Department on this. We're not going to get anywhere unless we get past the Law Department. This has been extensively reviewed, so we can probably trust the staff's decisions on what the definitions say and where they go. Then we can go on to other issues. Where are we then, Mr. Clarke?

Ms. Roslund: I have a question for Mr. Clarke. It appears that the majority of the definitions are being eliminated from the global definition section and left in the specific sections, which gives me a little pause. Can you give a brief overview, for both the Board members and the public? Generally speaking, are the majority of definitions in the specific sections, or are the majority of definitions in the global definitions? And what was your overarching thought process to remove them from the global definitions for the most part?

Mr. Clarke: I would say that the majority of the definitions in our rules are by far in the global definitions. A reason why we would say that it should not be in the global definitions is, for instance, if it's a term that only appears specifically in the body of the rules. For instance, the harassment definition. It appears specifically in the body of the rules, and then underneath that, there are examples of harassment and other language about harassment that's not just the definition but goes on to expound on the term. We thought that it was better to keep everything together rather than separate it and put it at the beginning of the rules in the global definitions. Just to keep everything together.

Another factor that we considered was, if we had to define a term in the global definitions, we wanted to make sure that there were not unintended consequences in other sections of the rules that we're not currently amending. Because when you define it in the global definitions, it's going to affect all of the rules. So, if we thought that it was a term that might have unintended consequences in other portions of the rules that we're not currently amending, we decided to just leave it where it was.

Ms. Roslund: Thank you.

Mr. Clarke: I want to thank the Board members for trusting the staff. We've been going cross-eyed looking at these rules. So, with respect to these terms, we will make these corrections and send them

back to the Law Department. They will be very happy that we've only chosen to define these terms once in our rules. So, we can move on to the end.

Underneath the chart, again, are some more comments from the Law Department. It's very similar to what the staff has done with determining where these terms should be. We looked at the comments from the Law Department, and we made some determinations, saying we agree with the Law Department, or we don't agree with the Law Department, and we gave our reasons why. Again, I appreciate that the Board members trust us in our determinations. We can go over them together, or you can continue to trust us with this smaller portion of comments at the bottom of the of the sheet, and we can make the corrections, present them to the Law Department, and hopefully wrap this up, so we can comment on the rules generally. But if the Board members want to discuss these remaining comments, I do think we have enough time to do that. It's up to the Board members.

Mr. Roche: I just want to go on record as saying I have the utmost faith in our Loft Board attorneys and staff, and I think for the sake of moving some of this forward, we need to leave some of these smaller details to their judgment, as our legal counsel.

Chairperson Hylton: Thank you, Mr. Roche.

Mr. DeLaney offered up an example from the chart of the kind of details he really didn't care about: "At the November 8th Board meeting, Board members decided the language for section" whatever "should read 'Anyone residing within or commercially utilizing any unit in the building, if different from the Prime Lessees and Sublessees.' Law crossed out 'Anyone' and replaced it with 'Any Person.' Law then questioned, 'Are we talking about person as defined above? Also, should person always be capitalized?' Person is defined in the global definitions as an individual, partnership, corporation, or other legal entity, and any individual or entity acting in a fiduciary representative capacity. I think it's okay to change 'Anyone' to 'Any Person'..."

Chairperson Hylton: But we have to present that to you, Mr. DeLaney.

Mr. Clarke: Right. We have to give you the opportunity to comment on it.

Mr. DeLaney: But when I get them at six o'clock on a Monday, and I'm expected to digest all this by Thursday afternoon, that's magical thinking.

Chairperson Hylton: We're doing our very best, Mr. DeLaney, to get the material to you as quickly as possible.

Mr. Clarke: And in a way that's easy for you to digest.

Chairperson Hylton: But I get your point, that you don't care about this. If everyone else feels the same, then this is an easy one.

Ms. Oddo said that while she understands why the Law Department is concerned with such minutiae, she is in favor of trusting the staff's decisions in order to move things forward.

Chairperson Hylton asked Mr. Clarke to continue.

Mr. Clarke: The next comment is on page 19 (same for the public). The Law Department wants the service language to conform to the service language the Board previously approved in section 1-21(c) on page 17. On this page, the Law Department is looking at the *Service of the Answer* -- the service and filing of answers. We previously fleshed out language for service on page 17, under *Service of the Application*. The Law Department's comment on page 19 is saying that the language you used on page 17 should match the language on page 19; and we agreed. So what we're going to do is make the service language under *Filing the Application* match the service language for *Service of the Answer*. Any comments or questions about that?

Mr. Barowitz said he trusted the staff to make these kinds of decisions.

Mr. Clarke: Thank you, Mr. Barowitz. Is there consensus on that among the Board members? Or do you want us to continue? You trust us to make these changes. We make everything conform. We saw the Law Department's comments; we looked at them; we analyzed them; we determined that the majority of them were actually correct. There might be smaller instances where we disagreed with the Law Department, and we have reasons why. But we're the Board's attorneys; we work very hard; and we're trying to get these rules passed. The reason why we're actually nitpicking at this phase is because

we don't want to do anything that the Board members haven't already seen. That's the only reason. We appreciate the confidence the Board members have in us, and by all means, we can make these changes, present them to the Law Department, and hopefully, wrap this up. That's not a problem.

Chairperson Hylton: That's what I'm hearing here. Absent anyone else speaking up, I think we're saying that the proposed changes you've articulated here on paper, the members of the Board are agreeing to let the staff make these changes, so we can go to Law and adopt it as presented it here, right? Anyone else?

Ms. Roslund: Mr. Clarke, can you quickly highlight some of the issues where you disagreed with the Law Department?

Mr. Clarke: Sure. I can give you an example.

Mr. DeLaney: Can we do page 23? That's the one where OATH gets to weigh in.

Mr. Clarke: Yes, let's look at page 23. There's a lot of comment on this one, and I'm going to point you in the right direction, don't worry (also page 23 for the public). On page 23, section 1-27(c) starts with, "All hearings will be conducted in accordance with the procedures stated in these rules." Going on, "Formal rules of evidence do not apply to such hearings, except rules of privilege recognized by law. At the hearing, the parties may be represented by counsel or by a duly authorized representative." And I'm sure you recall that the Board members took that language specifically from OATH's rules and incorporated it into our rules. Now, the Law Department is saying we have to add a parenthetical after it saying, "provided such duly ordered authorized representative, neither provides legal advice or an opinion of law nor holds himself or herself out as a lawyer without being admitted to the bar in the state of New York." OATH was involved with this because OATH agrees with the Board that we don't need to add this parenthetical. The Law Department is pushing back and saying, you do, because we don't want the unauthorized practice of law happening. So in my comments, I basically say that this is something that has to be hashed out between OATH and the Law Department because this language that the Board adopted is in OATH's rules.

Chairperson Hylton: This is part of OATH's rules, right? In other words, we are, literally, adding to their rules, because when it goes to OATH, they're going to follow their rules, right?

Mr. Clarke: Correct

Chairperson Hylton: So, what does it matter? I mean, if it stays in here, and it goes to OATH, and they follow their own rules, what would it matter?

Mr. Clarke: Honestly, I think the issue is between OATH and Law Department. It is OATH's position that it is not necessary in our rules and they don't want it in their rules. For the Loft Board's purposes, it is not an issue. Based on our discussions, it's not really adding or taking away that much. But I will say that this parenthetical may limit any type of representation at OATH, and I'm not sure the Board members want to have limits on the representation.

Chairperson Hylton: But they're going to OATH, and OATH, allows that, correct?

Mr. Clarke: Yes. Correct. And it's part of OATH's rules. And we just adopted OATH's rules, but the Law Department is flagging it.

Chairperson Hylton: Okay, so let's move on. We do disagree, so let's push to get OATH on our side.

Mr. DeLaney: But wait a second. I think your first question was the correct one. What does it matter? We did a comparison of our rules and OATH's rules. We came upon this and said, oh, that's not a bad idea. Suppose English is not the tenant's second language. Suppose the tenant is hard of hearing and needs somebody to help listen. That's what this was intended to do. And if the Law Department wants to put in parenthetical language that says, provided the authorized representative doesn't provide legal advice, this could take two months. Meanwhile, there are new cases out there waiting to get decided, awaiting rules that we've been trying to adopt since 2018, 2019 Loft Law cleanup bill. And it's holding up our process. If it makes OATH look bad, it won't be the first time.

Chairperson Hylton: And that's what I meant by what does it matter? Because it's going to go to OATH and OATH is going to follow their rules.

Mr. DeLaney: Right

Mr. Clarke: I agree with the sentiment, and if the Board members are fine, and they trust the staff, these adjustments can be made right away, and we can present them to the Law Department and say we're ready. We made all the changes that you asked us to make. If we didn't change it, here's the reason why. I wholeheartedly believe that in instances where we're saying we don't want to change something, we are correct. And we can move on from there. The staff is just as eager to get these rules passed as the Board members.

Chairperson Hylton: Yes, and it's holding up very important, more substantive issues that we need to get these rules passed.

Mr. Clarke: To be honest with you, the majority of the comments are very similar to the two we just discussed.

Chairperson Hylton: Is there another example where we disagree?

Mr. Clarke: Let's look on page 51 (page 50 for the public). There are two places labeled Narrative Statement, where the Law Department has circled the word provide. We agreed with the Law Department that the first instance of provide is correct. But Law Department is saying, do you mean serve instead of provide? The sentence reads, "Except as otherwise provided in this paragraph (2), the Owner or Responsible Party of an IMD must provide all Occupants with a Narrative Statement upon the approved Loft Board form." So the Law Department is saying, is it provide or serve? The Law Department says this should be served; and we're saying, you know what, you're right. It's not provide. The owner needs to serve the Narrative Statement on the occupants of the building.

And then further on down the page, the sentence reads, " If the Occupant provides the Owner or Responsible Party with a current and valid email address, the Owner or Responsible Party must also supply the Occupant with an electronic copy of the plans referred to in the Narratives Statement." Here, the Law Department is saying, if the occupant serves the owner or responsible party with a current or valid email address. Staff said no, that's not correct. The occupant doesn't serve the owner

with an email address. The occupant is going to provide the owner with an email address. So that's an instance where we're disagreeing with the Law Department.

Chairperson Hylton: That's very clear to me.

Ms. Roslund: Agreed

Chairperson Hylton: Right. Thank you.

Mr. Clarke: I will point out some corrections we made on the chart. On page 167 (page 165 for the public), Executive Director Martha Cruz, aka Eagle Eyes, did point out something at the bottom of the comments. You can see the last two, where it says we need to confirm this date. Executive Director Cruz was able to determine the correct dates I had questions about as I was doing this review. The Law Department was wondering about a section that says, "insert date." And where it says, "insert date," that date is going to be the effective date of the rule.

Chairperson Hylton: So we won't be able to insert this date until the thirty-day publication.

Mr. Clarke: Yes, that's correct. There's another section (page 159; 156 for the public) where it says, "insert date," which is going to be the effective date of the rules, but it's followed by sixty days after that date. So for example, if the effective date was March 17, sixty days after that would be around May 17. So we would have to put May 17 in the rules.

Chairperson Hylton: So, insert date. There's a bracket around insert date on this. And then it says, "sixty days after the effective date of the amended rule." But what's in the bracket, insert date? So, is it going to say May 17, sixty days after the effective date, this rule?

Mr. Clarke: It's going to read exactly as you said.

Chairperson Hylton: Okay

Mr. Clarke: Because the effective date would be March 17.

Mr. Clarke: Those are the kinds of comments Executive Director Cruz was able to confirm, and we're ready to make these changes and send them back to the Law Department.

Chairperson Hylton: I like it. So Board members, are your hearts clear and minds clear on what Mr. Clarke is presenting? Mr. Clarke, did you leave anything out that you need to cover?

Mr. Clarke: I don't believe so. The only thing I would say is that once we do make these changes and send them back to a Law Department, obviously, if we get any comments back, we would summarize what those comments are and let the Board members know immediately. But if the Law Department says great job, then we would present it back to the Board members so we can take the next step with voting on these.

Chairperson Hylton reminded the Board that Ms. Cruz would be proposing dates for a tentative additional meeting in May, in case it seemed the rulemaking issues could not be addressed at the regular meetings.

Mr. DeLaney: I think we're all in agreement that, at this point, the substantive provisions of these rule changes, including administrative issues in section one allowing electronic service, which currently we can't do, and significant changes to section two; the changes we made in the Narrative Statement process; the topic of sale of rights filings -- not allowing them to be filed without the consideration involved -- those are all substantive things. Whether we say provide when serve would be better or the other way around, if something goes wrong, we can always clean that up when we take our next pass at the rules.

But I'm looking for a little more clarity around the scrutiny by the Law Department. This is like a tennis game, and I feel like we're in the eighth set. And we're talking about May? If everything goes smoothly, we say hey, Law Department, we agree; we're good on all this serve versus provide stuff. What's the timetable here? My understanding is that, sooner or later, we have to formally vote this out for public comment; we have to hold a public hearing; there's a period of public comment; then it comes back to us; we reflect on what we heard at the hearing and the other written comments we get; maybe we

make some changes with the rules; and then we adopt them. And then it's still a period of time before they go into effect. So, what do we expect that timetable to be?

Mr. Clarke: A lot of that depends on how quickly the Law Department gets back to us. As far as the Loft Board staff is concerned, we're going to get working on making these corrections and sending them over to the Law Department as quickly as possible. Like, next week. Once we do that, it will just be a matter of time, waiting for them to get back to us.

Chairperson Hylton said that Ms. Cruz would work on a timeline to present to the Board.

Chairperson Hylton confirmed that the Board members had no further questions about rulemaking. He thanked Mr. Clarke and recognized Mr. Barowitz, who provided an update on Soho and Noho.

Mr. Barowitz: There was a Zoom meeting the other day. The Soho-Noho Coalition is run by Amit Solomon and the lawyer, Jack Lester. They are suing the city, if that's the right word, and feel that it's going to take at least two years until the various lawsuits come into effect. Essentially, they're concerned about the hundred-dollar-per-square-foot penalty. But what I realized is that neither Amit Solomon nor Jack Lester have any idea what the Loft Law is, what it does, and who it protects. And the big question that has come up over and over again, which they can't seem to answer, is that if we have legalized 970 original buildings, -- exactly how many in Soho-Noho, I don't really know -- but I would think probably the majority of them -- whether or not the legalization will exempt the people living there that do not have artists certification. They can't even come close to trying to describe or answer that question. Are they illegal because the law says they're illegal? Are those people there without artist certification still vulnerable? That's an open question, which they can't seem to answer. I don't know what the answer is, and I don't know whether there is any way we could make ourselves known to this coalition, so they can acknowledge the understanding of the legality of those buildings in Soho and Noho.

Chairperson Hylton: Are you asking if they can reach out to the Loft Board? Or if we should reach out to them?

Mr. Barowitz: They're not going to reach out to the Loft Board. I'm curious whether we have any jurisdiction to reach out to them to say, look, these buildings are under Loft Law jurisdiction. They're essentially legal, whoever is there, artist or non-artist. How does this conform to the vulnerability of those people that are living in SoHo and Noho without artist certification?

Chairperson Hylton: The buildings that are under Loft Board's jurisdiction is public information on the Department of Buildings website.

Mr. Barowitz: That's right. But this coalition has no idea about it.

Chairperson Hylton: Okay, I hear you. Maybe you can discuss with Ms. Cruz after offline. Maybe we can direct them to the website. And certainly, if a building's covered and folks in those buildings are protected under the Loft Law, of course, that makes it legal. But yes, as far as the data goes, we can probably provide them with a list of those buildings.

Mr. Barowitz and Ms. Cruz agreed to communicate on this.

Chairperson Hylton asked if there were any other issues or questions, before closing?

Mr. DeLaney: I saw concern expressed in the comments that it would be better not to have the hearing in the summer when people might be away. And how can we move things along? We're going to do another round. So, if we mess up and we put provide where it should be served, or anyone where it should be any person, we're going to have another chance to fix it. We're not going to have to live with it for forever.

Chairperson Hylton: The bottom line is, we're going to try to do this as quickly as possible, Mr. DeLaney. That's been on my heart for a long time, and I've expressed that to the Board. We're way overdue in getting these rules out. And yes, I hear everybody. Not everyone is going to be happy in terms of timing, but hopefully the Board and the loft community will be.

Ms. Roslund: I'd like to make a quick response to Mr. Barowitz. We talked about this some months ago. At the one hearing for Soho-Noho, the city did present some statistics about Loft Law units, versus joint living work quarters, versus residential units. I have a picture of a slide that has those numbers -- what

the percentages are and how many. So joint living work quarters is 1636 units. I'll forward it to everybody. It's a little blurry, so perhaps the staff could get this same information from, I think it was from DCP (Department of City Planning).

Chairperson Hylton: This concludes our March 17, 2022 public meeting. Our next public meeting is scheduled to be held on April 28, 2022. The governor's extension of the coronavirus emergency expires on April 15, 2022, so at this time, we do not know if future meetings will be held in person or virtually. However, Board members should be prepared for the next meeting to be in-person. But we will continue the virtual viewing, regardless of whether the in-person appearances are continued or not. Information will be updated on the Loft Board's website and Listserv. Board members, please mail your attendance sheets in today, and I thank everyone for their patience. We'll see you next month. Happy St. Patrick's Day. Thank you very much.